

The following Optional Paragraphs and Attachments have been placed on the Intranet for your consideration and convenience and may be used in drafting an appropriate Settlement Agreement to resolve particular situations. Where appropriate a short explanation is included with the Paragraph or Attachment to explain where it would be utilized. The Regions may consult with the Contempt Litigation and Compliance Branch for assistance when dealing with Installment Agreements, Security Agreements, Promissory Notes, Assignments, Deeds of Trust, Mortgages, Security Bonds and other types of guaranties in installment situations.

Optional Paragraphs for inclusion in the Settlement Agreement

1. MULTIPLE CHARGING PARTIES

[NOTE: The Settlement Agreement form will need to be modified as follows when the settlement involves multiple Charged Parties.]

REFUSAL TO ISSUE COMPLAINT – In the event any of the Charging Parties fails or refuses to become a party to this Agreement, and if in the Regional Director's discretion it will effectuate the policies of the National Labor Relations Act, the Regional Director shall decline to issue a Complaint herein (or a new Complaint if one has been withdrawn pursuant to the terms of this Agreement), and this Agreement shall be between the Charged Party, any Charging Party which becomes a party to this Agreement, and the undersigned Regional Director. A review of such action may be obtained pursuant to Section 102.19 of the Rules and Regulations of the Board if a request for same is filed within 14 days thereof. This Agreement shall be null and void if the General Counsel does not sustain the Regional Director's action in the event of a review. Approval of this Agreement by the Regional Director shall constitute withdrawal of any Complaint(s) and Notice of Hearing heretofore issued in the above captioned case(s), as well as any answer(s) filed in response.

PERFORMANCE – Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if any of the Charging Parties do not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the General Counsel has sustained the Regional Director.

NOTIFICATION OF COMPLIANCE – The undersigned parties to this Agreement will each notify the Regional Director in writing what steps the Charged Party has taken to comply herewith. Such notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. In the event any of the Charging Parties does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that no review has been requested or that the General Counsel has sustained the Regional Director. Contingent upon compliance with the terms and provisions hereof, no further action shall be taken in the above captioned case(s).

2. CONSOLIDATED R AND C CASES

Simultaneous herewith and as a condition of this Agreement, the Charged Party and the Charging Party will execute the attached Stipulation to Set Aside Election in (case number).

3. SPECIFIC ALLEGATIONS RESERVED FROM THE SETTLEMENT AGREEMENT

The allegations in the charge(s) in Case(s) () that are reserved from this Agreement under “Scope of the Agreement” are as follows: (set the specific allegations that are not covered by the settlement).

4. POSTING OF NOTICE

A. Optional mailing paragraph to be used in addition to or in place of normal posting language.

Upon approval of this Agreement, the Charged Party will duplicate and mail, at its own expense, a copy of the attached Notice to all current employees and former employees who were employed at any time since *(date of earliest ulp)*. Such Notices will be signed by a responsible official of the Charged Party, and the date of actual mailing shall be shown thereon. The Charged Party will furnish to the Regional Director written confirmation as to the date of mailing together with a list of names and addresses of employees to whom Notices were mailed.

B. Optional mailing paragraph to be used in conjunction with normal posting language when Region has reason to believe the plant may close during the posting period.

In the event that during the pendency of the 60 day Notice posting period the Charged Party goes out of business or closes the facility involved in this proceeding, the Charged Party will duplicate and mail, at its own expense, a copy of the attached Notice to all current employees and former employees who were employed at any time since *(date of earliest ulp)*. Such Notices will be signed by a responsible official of the Charged Party, and the date of actual mailing shall be shown thereon. The Charged Party will furnish to the Regional Director written confirmation as to the date of mailing together with a list of names and addressees of employees to whom Notices were mailed.

C. Optional language for foreign language posting/ mailing. (Add following to end of the Posting of Notice paragraph.)

Charged Party will post (mail) both English and (Spanish, etc.) Notices in the manner set forth above.

D. Optional provision for specific posting locations (in bold)

Upon approval of this Agreement and receipt of Notices from the Region, the Charged Party will post immediately **in the below-specified locations** for 60 consecutive days from the date of posting, copies of the attached Notice made a part hereof, said Notices to be signed by a responsible official of the Charged Party and the date of actual posting to be shown thereon. In the event this Agreement is in settlement of a charge against a union, the union will submit forthwith signed copies of said Notice to the Regional Director who will forward them to the employer whose employees are involved herein, for posting, the employer willing, in conspicuous places in and about the employer's plant where they shall be maintained for 60 consecutive days from the date of posting. Further, in the event that the charged union maintains a bulletin board at the facility of the employer where the alleged unfair labor practices occurred, the union shall also post Notices on such bulletin board during the posting period.

Posting Locations: (list specific locations)

E. Optional Paragraph to be used when the violation was committed by electronic means, such as by the use of e-mail. The Board approved this type of remedial provision in Public Service of Oklahoma, 334 NLRB No. 68 (2001).

The Charged Party shall also disseminate, on the first day of notice posting as required herein, a copy of this notice in electronic fashion on the same basis and to the same group or class of employees as were sent the **(describe the electronic message which is alleged to violate the Act)**.

5. PERFORMANCE

Optional Non-admissions clause

By entering into this Settlement Agreement the Charged Party does not admit that it has violated the National Labor Relations Act.

6. JOINT AND SEVERAL LIABILITY

[NOTE: This Optional Paragraph may be used in circumstances where two or more Charged Parties are obligated to pay backpay. The language below is drafted under the assumption that there are two Charged Parties.]

The Charged Parties assume joint and several liability for making whole (name(s) of individual(s)) by paying ((him)(her)(each of them)) a total of \$_____. Charged Parties will make appropriate withholdings for each named discriminatee. Within 14 days from approval of this Agreement, (Charged Party #1) will pay to (name(s) of individual(s)) (set forth ½ of the total amount due) and (Charged Party #2) will pay to (name(s) of individual(s)) (set forth ½ of the total amount due). (Charged Party #1) will pay an additional (1/2 of the total amount due) only upon being informed by the Regional Director that efforts to obtain payment from (Charged Party #2) have failed. (Charged Party #2) will pay an additional (1/2 of the total amount due) only upon being informed by the Regional Director that efforts to obtain payment from (Charged Party #1) have failed.

7. OPTIONAL SIGNATURE BOX TEMPLATE FOR MULTIPLE CHARGING PARTIES.

Charged Party		Charging Party	
By: Name and Title	Date	By: Name and Title	Date
		Charging Party	
		By: Name and Title	Date
		Charging Party	
		By: Name and Title	Date
		By: Name and Title	Date
Recommended By:	Date	Approved By:	Date
Board Agent		Regional Director	

8. BANKRUPTCY

[NOTE: This Optional language should be used in circumstances where the Charged Party has filed for bankruptcy.]

The (Charged Party) (Trustee in Bankruptcy) agrees that the backpay amount(s) set forth (above) (in Attachment A) (is) (are) (specify the priority of the claim – i.e. an administrative claim under 11 U.S.C. Section 507 (a)(1) and the (Charged Party) (Trustee in Bankruptcy) agrees that (it) (he/she) will not contest the allowance of a claim for the above-noted backpay amount(s) as (specify the priority of the claim – i.e. an administrative claim under 11 U.S.C. Section 507 (a)(1)).

All parties agree that this Agreement is subject to approval by the Bankruptcy Court.

All parties agree that the amounts agreed to herein, and liquidated hereby, will be submitted to the Bankruptcy Court for appropriate distribution along with other debts.

9. SAMPLE DEFAULT LANGUAGE

[NOTE: This Optional Paragraph may be used in circumstances where the Region concludes that there is a substantial likelihood that the Charged Party will be unwilling or unable to fulfill its settlement obligations. This language may also be included where the settlement involves large sums of money or installment payments. The Board approved the use of similar language in SAE Young Westmont-Chicago, LLC, 333 NLRB No. 59 (2001); No. 01-2328 (7th Cir. Oct. 1, 2001). See also Ernest Lee Tile Contractors, Inc., 330 NLRB No. 61 (2000).]

The Charged Party/Respondent agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party/Respondent, including but not limited to, failure to make timely installment payments of moneys as set forth above, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party/Respondent, the Regional Director may issue a complaint based upon the allegations of the charge(s) in the instant case(s) which were found to have merit, to wit; [], and/or reissue the complaint previously filed in the instant case(s). Thereafter, the General Counsel may file a motion for summary judgment with the Board on the allegations of the just issued complaint concerning the violations of the Act alleged therein. The Charged Party/Respondent understands and agrees that the allegations of the aforementioned complaint may be deemed to be true by the Board, that it will not contest the validity of any such allegations, and the Board may enter findings of fact, conclusions of law, and an order on the allegations of the aforementioned complaint. On receipt of said motion for summary judgment the Board shall issue an Order requiring the Charged Party/Respondent to show cause why said Motion of the General Counsel should not be granted. The only issue that may be raised in response to the Board's Order to Show Cause is whether the Charged Party/Respondent defaulted upon the terms of this settlement agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party/Respondent, on all issues raised by the pleadings. The Board may then issue an Order providing a full remedy for the violations found as is customary to remedy such violations, including but not limited to the remedial provisions of this Settlement Agreement. The parties further agree that the Board's order may be entered thereon ex parte and that, upon application by the Board to the appropriate United States Court of Appeals for enforcement of the Board's order, judgment may be entered thereon ex parte and without opposition from the [Charged Party][Respondent].

10. BACKPAY

[NOTE: Optional BACKPAY paragraph for installment payments (See samples below for Backpay Installment Payment Agreement (with and without personal guarantee provisions) and optional security documents (promissory note (signed by third party), assignment of contract proceeds, real property mortgage, real property deed of trust, bond, and security agreement)).]

In accordance with the terms of the attached Backpay Installment Payment Agreement, Attachment 1, the Charged Party will make whole the employees named below by payment to each of them of the amount opposite each name. The Charged Party will make appropriate withholdings for each named employee.

Name of Employee

Amount

Optional Attachments To The Settlement Agreement

ATTACHMENT 1

BACKPAY INSTALLMENT PAYMENT AGREEMENT

In full satisfaction of all monetary obligations it may have in Board Case No. _____, [Full name of charged party] agrees to pay backpay in the total amount of _____ DOLLARS (\$ _____), in [monthly][quarterly] installment payments beginning on _____ (date), and continuing every [month][quarter] until fully paid, to each named employee on the date, and in the amount, set forth below:

[Insert installment payment schedule (amounts, dates, [addresses] and employees)]

All payments will be made [directly to the employees at the above addresses][to the Board's offices located at _____]. [Full name of charged party] will make appropriate withholdings for each named employee.

In consideration of the Board granting this installment payment schedule, [full name of charged party] further agrees that, in the event of any failure to make a scheduled payment, or to cure any such failure within fourteen (14) days, the total amount of backpay set forth above, less any amounts paid, shall become immediately due and payable.

[Optional Default Provision: In consideration of the Board granting this installment payment schedule, [full name of charge party] further agrees that, in the event of any failure to make a scheduled payment, or to cure any such failure within fourteen (14)

days, the total backpay shall be increased to the amount of _____ DOLLARS (\$_____), less any amounts paid, which shall become immediately due and payable.

[Optional Security Language: In order to ensure full payment under this Backpay Installment Payment Agreement, [Full name of charged party][Owner][Principal][Third Party Corporation (E.g., Single Employer/Successor/Alter Ego)] has executed the attached [promissory note][assignment of contract proceeds][real property mortgage][real property deed of trust][bond][security agreement (with Financing Statement)] as security for full payment.

By: _____
[Full name of Charged Party] [Title]

Date: _____

[Optional Personal or Third Party Guarantee Provision: In the event [full name of charged party] fails to fully comply with the terms of this Backpay Installment Payment Agreement, the undersigned agrees to pay the total amount of the backpay set forth above, less all amounts paid pursuant to this Agreement by [full name of charged party].

By: _____
***[Owner][Principal][Third Party Corporation (Single
Employer/Successor/Disguised Continuance)]***

Date: _____

[NOTE: Promissory notes are negotiable instruments under the Uniform Commercial Code (UCC) and are an effective and efficient tool to guarantee payment of a backpay obligation by a third party, often the charged party's owner or another interested party.]

ATTACHMENT 2

PROMISSORY NOTE

[Total Amount]

Due:

[Owner][Other Third Party], for value received, promises to pay to the order of the National Labor Relations Board, at its offices located at [Regional Address], the sum of _____ DOLLARS (\$_____) payable in _____ [monthly][quarterly] installments of \$_____ each beginning _____ 1, 2002, and on the first day of each month thereafter, including the _____th and final payment due and payable on [date]. Each installment shall bear interest after maturity at the rate of Twelve Percent (12%) per annum.

It is agreed that if [Owner][Other Third Party] fails to make any payment as provided above, the entire balance remaining unpaid shall, at the option of the holder hereof, without notice, be and become due and payable immediately.

Address _____

[Owner][Other Third Party]

[NOTE: In order to guarantee payment of a backpay obligation, Regions may want to consider requiring the charged party to identify and assign the proceeds of a pending contract as security.]

ATTACHMENT 3

ASSIGNMENT OF CONTRACT PROCEEDS

This Assignment is made as of _____, 2002 (“Effective Date”) by and between [full name of Charged Party][Third Party], a [state of incorporation] corporation with its principal place of business at _____ (“Assignor”), and the National Labor Relations Board, an independent agency of the United States Government with offices located at [address of Region] (“Assignee”).

1. The Assignor entered into a Contract, a copy of which is incorporated by reference into this Assignment, with [Name of Obligor, state of incorporation, address] (“Obligor”) on [date] which requires, in paragraph _____ of the Contract, for Obligor to make period payments [set forth terms] to the Assignor ending [date], for full payment of the balance owed by Obligor to the Assignor.

2. Assignor agrees, as of the Effective Date, to assign to Assignee all rights, title and interest in the next _____ () monthly payments due and owing under the previously referenced payment plan encompassed in the Contract in order to secure its full payment of all sums set forth in the attached Backpay Installment Payment Agreement. The _____ monthly payment shall be the first monthly payment subject to this Assignment. Assuming all subsequent monthly payments are made on schedule, the _____ monthly payment shall be the last monthly payment subject to this Assignment.

3. This Assignment shall serve as notice to Obligor that the above-referenced payments should be made payable to the National Labor Relations Board and forwarded to the Assignee, located at [Regional Office address].

4. By entering into this Assignment, the Assignee does not waive its right to collect the money owed by the Assignor pursuant to the terms of the Backpay Installment Payment Agreement should the payments made pursuant to this Assignment not fully satisfy payments required by the Backpay Installment Payment Agreement.

[Name of Assignor]

National Labor Relations Board

By: _____

By: _____

Date: _____

Date: _____

Acknowledged by [Name of Obligor]

By: _____

Date: _____

[NOTE: Public and Private Deeds of Trust recorded against real property owned by charged or responsible third party can be used to secure payment under a backpay installment payment plan or promissory note. Even where real property is already encumbered, execution (and recording) of a deed of trust creates a lien against real property that will have to be satisfied upon sale or refinancing of the real property.]

ATTACHMENT 4

DEED OF TRUST

(Public or Private)

Obtain current form from local legal stationary store and complete and record

Deed of Trust with the assistance of the Contempt Litigation & Compliance Branch.

[NOTE: Mortgages are generally used in lieu of deeds of trust in some states and can be recorded against real property owned by charged or responsible third party to secure payment under a backpay installment payment plan or promissory note. Even where real property is already encumbered, execution (and recording) of a mortgage creates a lien against real property that will have to be satisfied upon sale or refinancing of the real property.]

ATTACHMENT 5

MORTGAGE

Obtain current form from local legal stationary store and complete and record

Mortgage with the assistance of the Contempt Litigation & Compliance Branch.

[NOTE: Security agreements (and financing statements) may be used to secure payment of backpay installment payment agreements when the charged party has otherwise unencumbered non-real property (for example, accounts receivable, fixtures, and equipment) and where state UCC provisions (including filing requirements) have been complied with.]

ATTACHMENT 6

SECURITY AGREEMENT

Obtain current form from local legal stationary store and complete and record Security Agreement (and Financing Statement) with the assistance of the Contempt Litigation & Compliance Branch.

[NOTE: Like letters of credit, surety bonds are unconditional promises by financial institutions to pay the settlement obligation of the charged party if the charged party fails to do so.]

ATTACHMENT 7

SURETY BOND

Note: *The Bond will be drafted and signed by a reputable bonding company and may look like the following:*

Bond

Bond No. _____

KNOW ALL MEN BY THESE PRESENTS: That [name of Charged Party], [address], as Principal, and United States Surety Company, [Address], as surety, are held and firmly bound unto Region _____ of the National Labor Relations Board, as Obligee, in the initial penal sum of _____ DOLLARS (\$ _____), lawful money of the United States, for the payment of which, well and truly made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly, severally, and firmly by these presents.

WHEREAS, the above bounded Principal has entered into a Backpay Installment Payment Agreement dated _____ ("Installment Agreement") with the Obligee for Board Case No. _____. Pursuant to the terms of the Installment Agreement, the Principal is to make monthly installment payments of \$_____ to the Obligee on the 15th business day of each month for a period of _____ consecutive months beginning _____, 2002.

AND WHEREAS, the Obligee has required the Principal to provide a surety bond for the outstanding amount of the Installment Agreement in the event of an uncured default by the Principal in the payment of the Installment Agreement.

NOW, THEREFORE, the conditions of this bond are such that if said Principal shall make the payments to the Obligee in accordance with the Installment Agreement and as set forth herein below then the above obligation shall be void; otherwise to be and remain in full force and effect; subject, however, to the following express conditions precedent:

Whenever the Principal shall be declared by the Obligee to be in default of the payment terms of the Installment Agreement outlined hereinabove, the Surety may

promptly remedy the default within 15 calendar days of having received notice from the Obligee, or shall promptly pay the Obligee the balance of the monthly payments due.

The penal sum of the bond is automatically reduced by \$ _____ for each and every payment made by the Obligee pursuant to the Installment Agreement.

No right of action shall accrue on this bond to or for the use of any other person, corporation or entity other than the Obligee named herein.

Notice to the Surety by the Obligee shall be in writing, by registered or certified mail to the address herein above.

Signed, sealed and dated this _____ day of _____, 2002.

[Name of Charged Party]

By: _____(Seal)

UNITED STATES SURETY COMPANY

By: _____(Seal)

[Name of Representative], Attorney-in-fact

ATTACHMENT 8

STIPULATION TO SET ASIDE ELECTION

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION ()

$$\left(\begin{array}{c} \vdots \\ \vdots \\ \vdots \end{array} \right)$$

Employer

and

Case(s)

$$\left(\begin{array}{c} \vdots \\ \vdots \\ \vdots \end{array} \right)$$

Petitioner

STIPULATION TO SET ASIDE ELECTION

The Regional Director issued a Decision and Direction of Election on (date); (or) The parties hereto entered into a Stipulated Election Agreement approved by the Regional Director on (date). An election was thereafter conducted on (date) and the Petitioner (Employer/Union) timely filed objections to the election. The Regional Director caused an investigation to be made concerning said objections. The undersigned parties hereby stipulate and agree as follows.

1. The Employer and the Petitioner (Union) agree that the election conducted on (date) be set aside and held a nullity by the Regional Director.
2. The Employer and the Petitioner (Union) hereby waive the right to: (a) submit any further evidence pertaining to the objections to the election held on (date); (b) a Report to the Board on said objections; (c) a hearing on said objections; (d) a Report and Recommendation on said objections; (e) except to any such Report and Recommendation on said objections; (f) a Decision and Order by the Board on said objections; (g) all other proceedings concerning said objections and the election held on (date) to which they may be entitled under the Act or the Rules and Regulations of the Board.
3. The Employer and the Petitioner (Union) agree that a new election shall be conducted pursuant to the following arrangements among employees in the appropriate

unit as set forth in (Item (number) of the Stipulated Election Agreement previously approved by the Regional Director) (the Decision and Direction of Election):

PAYROLL PERIOD FOR ELIGIBILITY:

DATE, HOURS AND PLACE OF ELECTION:

DATE:

HOURS:

PLACE:

4. The Employer and the Petitioner (Union) agree that within seven days following the issuance of the Notice of Rerun Election, the Employer shall file with the Region () office a list of the full names and addresses of the employees eligible to vote in the rerun election.

5. The Employer and the Petitioner (Union) agree that the Notice of Election for the rerun election to be held as specified above, will explain that it is a rerun of the election held on ().

6. It is understood and agreed by the Employer and the Petitioner (Union) that all procedures subsequent to the conclusion of the counting of the ballots in the rerun election shall be in conformity with the Rules and Regulations of the Board, and in accordance with the terms and provisions of the (Stipulated Election Agreement as previously approved by the Regional Director) or (Decision and Direction of Election).

_____	_____
(Employer)	(Petitioner (Union))
By _____	By _____
(Name) (Date)	(Name) (Date)
_____	_____
(Title)	(Title)
Recommended: _____	Date Approved: _____
_____	_____
(Board Agent)	Regional Director National Labor Relations Board